Alexander, Traci

From:	Hughes, Justin
Sent:	Monday, January 03, 2011 2:57 PM
To:	Matt Schruers
Cc:	Marsh, Sharon; Cotton, Amy
Subject:	RE: trademark bullying survey

Matt, the projects is being done by Amy Cotton, who is in External Affairs, but comments are going to Sharon Marsh in TM operations, so I would direct the request to Sharon at sharon.marsh@uspto.gov. I suppose a formal request should be addressed to the Undersecretary and sent to Sharon, although we certainly want to know stakeholders' timing needs informally as soon as possible.

Justin

From: Matt Schruers [(b)(6)
Sent: Monday, January 03, 2011 9:03 AM
To: Hughes, Justin
Subject: trademark bullying survey

Justin:

Happy New Year. Would you be able to direct me to the person responsible for the trademark 'bullying' survey that PTO is conducting? (link below) CCIA member(s) and likely the association also will be responding, but there is interest in an extension on the deadline, if possible. I'm trying to find out to whom such a request should be made.

http://www.uspto.gov/trademarks/bullies_survey.jsp

Thanks in advance any pointers.

Matthew Schruers
Vice President, Law & Policy
Computer & Communications Industry Association
(b)(6)

George, Dahlia

From: George, Dahlia
Sent: Friday, January 28, 2011 3:29 PM
To: (b)(6)
Subject: FW: Trademark litigation tactics: confidentiality question

Dear Mr. Smith:

My name is Dahlia George and I am an associate attorney in the Office of General Law at the United States Patent and Trademark Office.

Your inquiry regarding the confidentiality of submission of comments relating to aggressive trademark tactics has been forwarded to me. Specifically, I am in receipt of your January 15, 2011 email (see below) where you cite to a confidentiality clause for the Small Business Administration's fraud section, in support of your request to have your comments to the Trademark Litigation Tactics study kept confidential.

Please note that the SBA clause to which you cite pertains to fraud, waste, or abuse *investigations or audits*. These investigations/audits can involve offenses that may become the subject of criminal investigations. Therefore, anonymity may be essential for an investigation to go forward and, even then, *disclosure of one's identity is not guaranteed and may be unavoidable if an investigation is to advance*: "You may also request that your identity remain confidential. In this case, SBA OIG will not release your name without your prior consent unless we determine that such disclosure is absolutely unavoidable during the course of an investigation or audit."

That is not the case here, as there is no investigation or audit involved in the submission of public comments.

As was previously stated, members of the public are free to disclose as much or as little as they wish.

I hope this responds to your inquiry.

If you have any additional questions, please do not hesitate to contact me.

Thank you,

/Dahlia A. George/

Dahlia A. George
Office of General Law
(571) 272-4224

From: Scott Smith (b)(6)
Sent: Saturday, January 15, 2011 1:01 AM
To: TMFeedback
Subject: Re: "Small Business Study", Trademark Bullies

Hi, thanks, but I'm confused. Then how could the SBA's fraud section say: "You may also request that your identity remain confidential. In this case, SBA OIG will not release your name without your prior consent unless we determine that such disclosure is absolutely unavoidable during the course of an investigation or audit."? If the SBA can keep information confidential, why can't the USPTO?

I'm not an attorney, or expert on FOIA, but based from what I've also been told by the Justice Dept, the USPTO could decline to disclose the information if they treat someone as a confidential source.

I appreciate your suggestion that people could anonymously submit their information, but that would seem to undermine the purpose of the study. I don't know how helpful it would be for the USPTO to receive anonymous, non-specific allegations of trademark bullying.

Please excuse my directness, but it's very troubling to hear that trademark bullies may be so easily

provided access to all the information small business victims provided to the USPTO about trademark bullies, and did so in hopes of exposing and stopping trademark bullies. It seems like a situation ripe for abuse and retaliation by trademark bullies, the very people that created the need for the study.

Thanks again.

Scott Smith
(b)(6)

On 1/14/11 12:14 PM, TMFeedback wrote:
While the USPTO can take measures not to publicize the identity of the commenters, the submitted comments are subject to the Freedom of Information Act (FOIA). We are not permitted to redact from a FOIA response any portions of comments. So while we would intend to keep these confidential, in the event that someone submits a FOIA request, we would have no choice but to comply. Our notice specifically states: " Please note that the USPTO will fully consider any comments you submit, even if you choose not to identify yourself in a particular manner." So, if the commenter is careful to answer the questions in a manner that does not reveal identifying information, then he or she could assure anonymity. That is, to speak in general terms rather than specifics. For example: "I own a trademark and was contacted by a company who believed I was infringing their mark."---- without specifying what the marks even are.

Roth, Jason

From: Lynch, Cynthia
Sent: Wednesday, September 22, 2010 2:16 PM
To: Morris, Craig
Cc: Roth, Jason
Subject: RE: collecting information for the "bullies" study

Please forward any responses to me and Jason Roth. Thanks.

From: Morris, Craig
Sent: Wednesday, September 22, 2010 2:00 PM
To: Lynch, Cynthia
Subject: RE: collecting information for the "bullies" study

It is fine to use that mailbox--- I just need to know where to then forward any e-mail received therein.

From: Lynch, Cynthia
Sent: Wednesday, September 22, 2010 1:08 PM
To: Morris, Craig
Subject: collecting information for the "bullies" study

Craig,
May we use the TM Feedback emailbox to collect comments for the "bullies" study? We would be issuing a web notice with a list of questions. Please just let me know if this would post too much of a burden, and we can open a specific mailbox. Thanks.

Cynthia C. Lynch
Administrator for Trademark Policy and Procedure
571-272-8742

Roth, Jason

From: Lynch, Cynthia
Sent: Thursday, October 07, 2010 4:13 PM
To: Roth, Jason
Subject: RE: bullies notice

Yes. It's posted! http://www.uspto.gov/trademarks/bullies_survey.jsp

---

From: Roth, Jason
Sent: Thursday, October 07, 2010 2:35 PM
To: Lynch, Cynthia
Subject: FW: bullies notice

(b)(5)

From: Lynch, Cynthia
Sent: Friday, September 24, 2010 2:44 PM
To: Marsh, Sharon; Morris, Craig; Beresford, Lynne; Cohn, Debbie; Hershkowitz, Meryl; Cotton, Amy
Cc: Roth, Jason
Subject: RE: bullies notice

(b)(5)

From: Marsh, Sharon
Sent: Thursday, September 23, 2010 8:26 AM
To: Morris, Craig; Lynch, Cynthia; Beresford, Lynne; Cohn, Debbie; Hershkowitz, Meryl; Cotton, Amy
Cc: Roth, Jason
Subject: RE: bullies notice

(b)(5)

From: Morris, Craig
Sent: Wednesday, September 22, 2010 6:01 PM
To: Lynch, Cynthia; Marsh, Sharon; Beresford, Lynne; Cohn, Debbie; Hershkowitz, Meryl
Cc: Roth, Jason
Subject: RE: bullies notice

Some very minor points:

(b)(5)

From: Lynch, Cynthia
Sent: Wednesday, September 22, 2010 1:43 PM
To: Marsh, Sharon; Beresford, Lynne; Cohn, Debbie; Hershkowitz, Meryl; Morris, Craig
Cc: Roth, Jason
Subject: bullies notice

(b)(5)

Cynthia C. Lynch
Administrator for Trademark Policy and Procedure
571-272-8742

Lynch, Cynthia

From: Cotton, Amy
Sent: Tuesday, November 30, 2010 10:44 AM
To: Marsh, Sharon; Brown, Brian (TM)
Cc: Morris, Craig; Beresford, Lynne; Cohn, Debbie; Lynch, Cynthia
Subject: RE: Small Business Study

I am working on the paper now... Thanks for this.

From: Marsh, Sharon
Sent: Tuesday, November 30, 2010 10:37 AM
To: Brown, Brian (TM); Cotton, Amy
Cc: Morris, Craig; Beresford, Lynne; Cohn, Debbie; Lynch, Cynthia
Subject: FW: Small Business Study

Thanks. I'm forwarding this to a few others who are working on the study.

From: Morris, Craig
Sent: Tuesday, November 30, 2010 9:57 AM
To: Beresford, Lynne; Cohn, Debbie; Marsh, Sharon; Lynch, Cynthia
Subject: Small Business Study

Please see the below/attached.

From: Mark McKenna (b)(6)
Sent: Monday, November 29, 2010 5:05 PM
To: TMFeedback
Subject: Small Business Study

To whom it may concern -

In developing any policy recommendations relating to "trademark bullies," I invite you to review the attached article by Mark Lemley and Mark McKenna, which details a number of excessive trademark cases.

Mark McKenna

Lynch, Cynthia

From: Hieber, Christina J.

Sent: Thursday, June 24, 2010 3:51 PM

To: Cotton, Amy

Subject: something we could possibly cite in the paper for the TM enforcement project

From the Wall Street Journal -- talks about how small businesses often don't do the necessary clearance, etc.

*Name Choices Spark Lawsuits

Return to Top

Maltby, Emily
Wall Street Journal

JUNE 24, 2010

Start-Ups Can Get Mired in Costly Trademark Scuffles With Bigger Firms

Jimmy Winkelmann started a clothing company several years ago to mock fellow students who wore the outdoorsy The North Face brand, despite having no inclination to venture into the wilderness. He dubbed his company "The South Butt" and flipped The North Face's half-dome logo to look like buttocks.

But at least one party wasn't amused: The North Face.

Mr. Winkelmann, now a student at the University of Missouri at Columbia, received a cease-and-desist letter from the company last summer. He declined to comply, prompting a trademark infringement suit that was settled out of court in April.

The South Butt is still in operation. Mr. Winkelmann's lawyer and a spokeswoman for The North Face, a unit of VF Corp., said the matter was resolved amicably, but declined to comment further. It's unclear if Mr. Winkelmann is required to make any payments to The North Face or if the company has imposed any conditions on his marketing efforts.

Small businesses, unwittingly or not, have a history of running into scuffles by playing off a larger company's protected trademarks—sometimes resulting in legal battles they can ill afford, given the limited resources of most start-up operations. Some 3,500 trademark cases are filed each year in U.S. district courts, according to FTI Consulting Inc., a Baltimore advisory firm that tracks intellectual-property statistics.

Large corporations are highly protective of the brands and logos they often spend years and millions of dollars promoting. Inexperienced entrepreneurs may not realize "that a lot of big businesses have people who are assigned to find people who are using their trademark," says Anuj Desai, an attorney specializing in trademarks and licensing at Arnall, Golden, Gregory LLP in Atlanta.

Victor and Cathy Moseley of Elizabethtown, Ky., say they received an initial complaint alleging trademark infringement from Limited Brands Inc., the parent company of Victoria's Secret, within two weeks of opening an adult novelty and lingerie shop called "Victor's Secret" in 1998. The Moseleys ultimately changed the name of the boutique to Cathy's Little Secret, but still entered into a 12-year court battle to keep the original name. The shop lost an appeal in May.

"It's discouraging," says Ms. Moseley, who plans a further appeal. Limited Brands declined to

comment.

The big corporation doesn't always win. Last fall, McDonald's Corp. lost an eight-year battle to prevent a family-run restaurant in Kuala Lumpur from calling itself McCurry. Malaysia's top court ruled that the Indian-food eatery could keep the prefix "Mc" in its name, as long as it distinguishes its food from the hamburger giant's. McDonald's didn't return a call for comment.

But many small businesses find it's not worth picking a battle with a deep-pocketed corporation. Legal representation alone can run $10,000 to $50,000, or several hundred thousand dollars if the matter goes to court, according to Mr. Desai. Most owners who find themselves on the receiving end of a cease-and-desist letter often settle the matter quickly to avoid the cost of a prolonged lawsuit, he says.

Problems could likely be avoided with some due diligence, says Maria A. Scungio, co-chair of international trademark and copyright practice for Edwards Angell Palmer & Dodge LLP in New York. When starting up, many small-business owners don't seek legal advice or register their name with the U.S. Patent and Trademark Office, which could tip them off if they are encroaching on someone else's trademark, she says.

Ric Trader says he regrets not registering his company's trademark when he started Yard Doctor Landscaping in Punta Gorda, Fla., in 1998. That process, he says, may have made him aware of the existence of Lawn Doctor Inc., a national lawn-care company in Holmdel, N.J., that began franchising in 1967.

Mr. Trader says he was sent a cease-and-desist letter by Lawn Doctor in 2002, when his company was already well established, breaking $1 million in annual sales. He ultimately decided to ignore the letter, reasoning that customers wouldn't be confused by the similar names.

Lawn Doctor soon filed a lawsuit against the small company. Mr. Trader, who didn't retain a lawyer, says that the ensuing years of legal paperwork were draining.

In an out-of-court settlement in 2005, Mr. Trader says he agreed to change his company's name in exchange for a five-figure sum. But with all the setbacks as well as Hurricane Charley taking a toll on his business, Mr. Trader decided to sell the business just weeks later. Lawn Doctor declined to comment.

Write to Emily Maltby at emily.maltby@wsj.com

Christina J. Hieber | Associate Solicitor | United States Patent and Trademark Office | Office of the Solicitor | Main: 571-272-9035 | Direct: 571.272.8736 | Fax: 571.273.0373 | email: christina.hieber@uspto.gov | MAIL: P.O. Box 15667, Arlington, VA 22215 | HAND DELIVERY: Madison West -8C43A, 600 Dulany Street, Alexandria, VA 22314

Lynch, Cynthia

From: Knight Jr., Bernard J.
Sent: Thursday, October 14, 2010 10:15 AM
To: Hieber, Christina J.
Cc: Chen, Ray; Lynch, Cynthia
Subject: Trademark Litigation Tactics

Hi Christina,

Did you happen to review the posting on the internet regarding Trademark litigation tactics?
Also, can you please include a write up for the Weekly report due today?

Bernard J. Knight, Jr.
General Counsel
United States Patent and Trademark Office
Telephone: 571-272-7000

Brown, Brian (TM)

From: Morris, Craig
Sent: Tuesday January 11, 2011 7:44 AM
To: Brown, Brian (TM)
Subject: Study on litigation tactics

Brian, the deadline for submission was extended to February 7, so you may continue to receive other submissions.

Brown, Brian (TM)

From: Morris, Craig
Sent: Tuesday, January 04, 2011 5:39 PM
To: Brown, Brian (TM)
Subject: all sent

Brian, you now have everything that has been sent as of today to the mailbox.

Brown, Brian (TM)

From: Roth, Jason
Sent: Wednesday, January 26, 2011 3:29 PM
To: Brown, Brian (TM)
Subject: RE:

Thanks, Brian! I am impressed by the amount of feedback we've received.

From: Brown, Brian (TM)
Sent: Wednesday, January 26, 2011 11:34 AM
To: Roth, Jason
Subject:

I have sent what was received as of 1/7.

More to come tomorrow. There is a chance that there may be a few duplicates in this batch.

Brian

Brown, Brian (TM)

From: Roth, Jason
Sent: Wednesday, January 26, 2011 11:21 AM
To: Brown, Brian (TM)
Subject: RE: TM Litigation Tactics Study & Report

Thanks, Brian! Hope all is well in your world, too.

From: Brown, Brian (TM)
Sent: Wednesday, January 26, 2011 11:18 AM
To: Roth, Jason
Subject: RE: TM Litigation Tactics Study & Report

Hi Jason - hope all is well.

Yes, I have been receiving comments. I will search my folders and send you what I have this week.

Thanks,

Brian

From: Roth, Jason
Sent: Wednesday, January 26, 2011 11:16 AM
To: Brown, Brian (TM)
Subject: TM Litigation Tactics Study & Report

Hi Brian,

I am working with Cynthia Lynch to summarize the comments received in response to the web notice re trademark litigation tactics. I was hoping you could send me the feedback received thus far. I previously emailed Craig Morris and he suggested that I contact you.

Thanks,
Jason

Jason I. Roth
Staff Attorney
Office of the Commissioner for Trademarks
Phone: 571-272-8258
Fax: 571-273-8258

Brown, Brian (TM)

From: TMFeedback
Sent: Thursday, January 13, 2011 6:35 AM
To: Brown, Brian (TM); Hickey, Toni
Subject: FW: "Small Business Study", Trademark Bullies

From: Scott Smith (b)(6)
Sent: Wednesday, January 12, 2011 5:09 PM
To: TMFeedback
Subject: Re: "Small Business Study", Trademark Bullies

Hi, sorry about the additional email, but small businesses that are harassed by trademark bullies often have to sign very restrictive settlement/non-disclosure agreements to end the harassment (it's a common tactic of trademark bullies trying to keep others from finding of about their bullying ways). So understandably, these small businesses are very concerned that they will get sued if they tell anyone, including the USPTO, about their experiences with a trademark bully.

Could you let me know if the USPTO can somehow assure small business owners that they will be protected from further litigation from trademark bullies if they tell their stories to the USPTO?

Thanks.

Scott Smith, President
BizStarz
(b)(6)

Morris, Craig

From: TMFeedback
Sent: Tuesday, January 11, 2011 9:56 AM
To: Christine Farley
Subject: RE: Small Business Study

It is February 7.

http://www.uspto.gov/trademarks/notices/trademark_study.jsp

From: Christine Farley (b)(6)
Sent: Tuesday, January 11, 2011 9:08 AM
To: TMFeedback
Subject: RE: Small Business Study

Thank you. I could not find the announcement of the extension of the deadline. Can you let me know what the new deadline is?

Christine Haight Farley
Professor and Associate Dean for Faculty and Academic Affairs American University Washington College of Law
4801 Massachusetts Ave NW
Washington DC 20016
(b)(6)

-----Original Message-----
From: TMFeedback [mailto:TMFeedback@USPTO.GOV]
Sent: Tuesday, January 11, 2011 7:36 AM
To: Christine Farley
Subject: RE: Small Business Study

Thank you for your submission for the study on trademark litigation tactics. Your input will be considered in connection with the study and report to Congress on this issue. (And please note that we actually posted a new notice yesterday announcing the extension of the submission deadline, so this certainly was not a problem).

From: Christine Farley (b)(6)
Sent: Monday, January 10, 2011 7:22 PM
To: TMFeedback
Subject: Small Business Study

To Whom It May Concern:

Unfortunately, I was away last week and unable to access the document that I am now attaching. I hope that you will be able to consider it, although I do understand that it is one business day late. Please let me know if you have any questions, or if I can be of any further assistance.

Sincerely,

Christine Haight Farley
Professor and Associate Dean for Faculty and Academic Affairs American University Washington College of Law
4801 Massachusetts Ave NW
Washington DC 20016
(b)(6)

Morris, Craig

From: TMFeedback
Sent: Friday, January 14, 2011 7:18 AM
To: (b)(6)
Subject: RE: "Small Business Study", Trademark Bullies

We will check with the policy folks on this to see if they want the statement about confidentiality specifically added to the USPTO posting. It really is not our call (we simply monitor this mailbox).

Thank you for raising the issue.

From: Scott Smith (b)(6)
Sent: Thursday, January 13, 2011 9:43 PM
To: TMFeedback
Subject: Re: "Small Business Study", Trademark Bullies

Thanks, but it's not me that I'm concerned or asking about. It's for small businesses that are concerned that they will be retaliated against if they submit information about trademark bullies for the USPTO's study.

Wouldn't it be possible to add a sentence or two stating that submissions kept confidential (or give people the option to have their submissions kept confidential)? If the USPTO is unable or willing to do that, then small business owners will have to fear their submissions could end up in the wrong hands and lead to retaliation.

If the USPTO really wants candid feedback about trademark bullies, they will hopefully be able to assure small business owners that their submissions can be kept confidential or can be submitted anonymously.

Thanks again.

Scott Smith
(b)(6)

On 1/13/11 4:27 AM, TMFeedback wrote:
> The USPTO website does not specifically say anything about the submissions being confidential. We are simply assuring you that the information is being used as part of a report to Congress, but the actual submissions themselves are only available to the people drafting the report.
>
>
> From: Scott Smith (b)(6)
> Sent: Thursday, January 13, 2011 6:55 AM
> To: TMFeedback
> Subject: Re: "Small Business Study", Trademark Bullies
>
> Thanks for the info. Do you know where on the USPTO's website that it mentions that the information will be considered confidential? It would be helpful if like the SBA's website (see: Report Fraud, Waste&

Abuse<http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/report-fraud-waste-abuse>), if the USPTO could explain how the information is or can be kept confidential. This is extremely critical for small businesses considering submitting information about a trademark bully.
>
> Thanks again. Hope my suggestions are helpful.
>
> Scott Smith
> (b)(6)
>
> On 1/13/11 3:32 AM, TMFeedback wrote:
>
> We really can't make any assurances of that nature. But rest assured that any action would not be the result of a response to the study, inasmuch as the information provided is confidential and is only being used to prepare a report to Congress.
>
>
> From: Scott Smith (b)(6)
> Sent: Wednesday, January 12, 2011 5:09 PM
> To: TMFeedback
> Subject: Re: "Small Business Study", Trademark Bullies
>
> Hi, sorry about the additional email, but small businesses that are harassed by trademark bullies often have to sign very restrictive settlement/non-disclosure agreements to end the harassment (it's a common tactic of trademark bullies trying to keep others from finding of about their bullying ways). So understandably, these small businesses are very concerned that they will get sued if they tell anyone, including the USPTO, about their experiences with a trademark bully.
>
> Could you let me know if the USPTO can somehow assure small business owners that they will be protected from further litigation from trademark bullies if they tell their stories to the USPTO?
>
> Thanks.
>
> (b)(6)
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> On 1/12/11 1:06 PM, TMFeedback wrote:
> Please see that the original posting has been modified to extend the comment period until February 7.
>
> http://www.uspto.gov/trademarks/notices/trademark_study.jsp
>
>
> From: Scott Smith (b)(6)

> Sent: Wednesday, January 12, 2011 4:01 PM
> To: TMFeedback
> Subject: Re: "Small Business Study", Trademark Bullies
>
> You're very welcome. Hopefully Congress will decide to hold hearings about the problem of trademark bullies.
>
> Could you let me know if the USPTO will consider anymore comments from small business owners, and if so, until when? Very few (if any) small business owners knew about this study until after I sent them an email about it with a copy of my response attached.
>
> Thanks.
>
> Scott Smith, President
> BizStarz
> (b)(6)
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>
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>
> On 1/12/11 9:09 AM, TMFeedback wrote:
> Thank you---- although we are not aware at this time of any intention of Congress to hold hearings on this matter.
>
>
> From: Scott Smith (b)(6)
> Sent: Wednesday, January 12, 2011 3:00 AM
> To: TMFeedback
> Subject: Re: "Small Business Study", Trademark Bullies
>
> Hi, if I may, I'd like to suggest that Congress hold hearings about the issue of "trademark bullies." Besides myself, I know several small business owners who have been harassed and intimidated by trademark bullies, and would consider it an opportunity and a privilege to testify in front of Congress about their unfortunate experiences. If Congress does hold hearings about trademark bullies, hopefully they will compel the appearance of CEOs of several companies who are strongly suspected as being trademark bullies.
>
> Thank you. Let me know if you have any questions.
>
> Scott Smith, President
> BizStarz
> (b)(6)
>
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>
> On 1/10/11 11:55 AM, TMFeedback wrote:
> Thank you for your submission for the study on trademark "bullies." Your input will be considered in connection with the study and report to Congress on this issue.

>
> _____
>
>
.
> --
> Scott Smith, President
> BizStarz
> (b)(6)
>
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>
> ----------
> BizStarz provides cost-effective public relations services to innovative small business entrepreneurs. BizStarz' clients and services have been featured by a variety of leading media organizations including CNN, BusinessWeek and The Wall Street Journal.
>
> Note: Due to Entrepreneur magazine's aggressive efforts to monopolize the word "entrepreneur," Scott Smith's former PR firm for entrepreneurs, "EntrepreneurPR," was forced to cease use of its name in 2000 and again in 2003 (despite a unanimous February 2002 ruling by the 9th U.S. Circuit Court of Appeals, that Entrepreneur magazine's trademark is "weak" and that it does not have extensive rights to the word "entrepreneur.").
>
>
> --
> Scott Smith, President
· BizStarz
> (b)(6)
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> --
> Scott Smith, President
· BizStarz
> (b)(6)
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>

--
Scott Smith, President
BizStarz
(b)(6)

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Morris, Craig

From: TMFeedback
Sent: Thursday, January 13, 2011 6:29 AM
To: (b)(6)
Subject: RE: "Small Business Study", Trademark Bullies

The USPTO has partnered with the Small Business Administration on this, and they are to be helping to get the word out.

Yes, the extended deadline is going to be publicized in a banner story on the USPTO Home Page and in the Director's blog.

The listing itself also clearly identifies the extension:

Trademark User Input

- Request for Comments: Trademark Litigation Tactics (DEADLINE EXTENDED) (10Jan2011)

From: Scott Smith (b)(6)
Sent: Wednesday, January 12, 2011 4:22 PM
To: TMFeedback
Subject: Re: "Small Business Study", Trademark Bullies

Great! Thanks for the heads up.

Will the USPTO be publicizing the extended deadline to small business groups and media outlets? I don't think many, if any, even knew about the original deadline or even that the USPTO is studying the problem of trademark bullies vs small businesses.

Thanks.

Scott Smith
(b)(6)

On 1/12/11 1:06 PM, TMFeedback wrote:

> Please see that the original posting has been modified to extend the comment period until February 7.
>
> http://www.uspto.gov/trademarks/notices/trademark_study.jsp
>
> ---
>
> **From:** Scott Smith (b)(6)
> **Sent:** Wednesday, January 12, 2011 4:01 PM
> **To:** TMFeedback
> **Subject:** Re: "Small Business Study", Trademark Bullies
>
> You're very welcome. Hopefully Congress will decide to hold hearings about the problem of trademark bullies.
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>
> Thanks.
>
> Scott Smith, President
> BizStarz
> (b)(6)

(b)(6)

On 1/12/11 9:09 AM, TMFeedback wrote:

Thank you— although we are not aware at this time of any intention of Congress to hold hearings on this matter.

From: Scott Smith (b)(6)
Sent: Wednesday, January 12, 2011 3:00 AM
To: TMFeedback
Subject: Re: "Small Business Study", Trademark Bullies

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Sent: Thursday, January 13, 2011 6:33 AM
To: (b)(6)
Subject: RE: "Small Business Study", Trademark Bullies

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From: Scott Smith (b)(6)
Sent: Wednesday, January 12, 2011 5:09 PM
To: TMFeedback
Subject: Re: "Small Business Study", Trademark Bullies

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> **Sent:** Wednesday, January 12, 2011 4:01 PM
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Morris, Craig

From: TMFeedback
Sent: Thursday, January 13, 2011 7:26 AM
To: (b)(6)
Subject: RE: "Small Business Study", Trademark Bullies

Yes, you could submit a revised version.

The contact with SBA on this has been very recent, and we don't specifically know what their plans are in this regard.

From: Scott Smith (b)(6)
Sent: Thursday, January 13, 2011 6:42 AM
To: TMFeedback
Subject: Re: "Small Business Study", Trademark Bullies

Thanks very much for the info. Glad to hear that the USPTO has partnered with the SBA on this, but I receive the SBA's press releases, and I don't recall them ever mentioning the USPTO's study about trademark bullies. And I don't mean any disrespect, but barely any small business owners visit the USPTO's website or read the Director's blog, so hopefully the USPTO will publicize this study by mentioning it in one or more of its press releases.

Thanks again.

Scott Smith
(b)(6)

P.S. Since the deadline was extended until Feb 7th, is it safe to assume that I could submit a revised version of what I previously submitted? I was rushing to submit it in time, but I've since noticed some typos and other information I'd like to fix for the USPTO.

On 1/13/11 3:29 AM, TMFeedback wrote:
> The USPTO has partnered with the Small Business Administration on this, and they are to be helping to get the word out.
>
> Yes, the extended deadline is going to be publicized in a banner story on the USPTO Home Page and in the Director's blog.
>
> The listing itself also clearly identifies the extension:
>
>
>
> Trademark User Input
>
> * Request for Comments: Trademark Litigation Tactics (DEADLINE EXTENDED)<http://www.uspto.gov/trademarks/notices/trademark_study.jsp> (10Jan2011)
>
>
>

> From: Scott Smith [redacted]
> Sent: Wednesday, January 12, 2011 4:22 PM
> To: TMFeedback
> Subject: Re: "Small Business Study", Trademark Bullies
>
> Great! Thanks for the heads up.
>
> Will the USPTO be publicizing the extended deadline to small business groups and media outlets? I don't think many, if any, even knew about the original deadline or even that the USPTO is studying the problem of trademark bullies vs small businesses.
>
> Thanks.
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> Scott Smith
> [redacted]
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To: (b)(6)
Subject: RE: "Small Business Study", Trademark Bullies

The USPTO website does not specifically say anything about the submissions being confidential. We are simply assuring you that the information is being used as part of a report to Congress, but the actual submissions themselves are only available to the people drafting the report.

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Subject: Re: "Small Business Study", Trademark Bullies

Thanks for the info. Do you know where on the USPTO's website that it mentions that the information will be considered confidential? It would be helpful if like the SBA's website (see: Report Fraud, Waste & Abuse), if the USPTO could explain how the information is or can be kept confidential. This is extremely critical for small businesses considering submitting information about a trademark bully.

Thanks again. Hope my suggestions are helpful.

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Sent: Friday, January 14, 2011 3:14 PM
To: (b)(6)
Subject: RE: "Small Business Study", Trademark Bullies

We unfortunately will not be able to do this. While we can take measures not to publicize the identify of the commenters, the submitted comments are subject to the Freedom of Information Act (FOIA). We are not permitted to redact from a FOIA response any portion of comments. So while we would intend to keep these confidential, in the event that someone submits a FOIA request, we would have no choice but to comply.

Our notice explicitly states: "Please note that the USPTO will fully consider any comments you submit, even if you choose not to identify yourself in a particular manner."

So, if the commenter is careful to answer the questions in a manner that does not reveal identifying information, then he or she could assure anonymity. That is, to speak in general terms without identifying specifics.

For example, "I owned a trademark and was contacted by a company who believed I was infringing their mark"--- without specifying exactly what the marks even were.

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Morris, Craig

From: TMFeedback
Sent: Saturday, January 15, 2011 7:23 AM
To: (b)(6)
Subject: RE: "Small Business Study", Trademark Bullies

We will have to send this back to the source of our other information, as this is what we had been told when we asked the Administrator for Trademark Policy and Procedure about this:

"I agree that the comments would probably be subject to FOIA. I did confer briefly with our FOIA officer and she concurs that no exemption seems applicable. So although we could take measures not to publicize the identity of the commenters, I don't think we can guarantee them confidentiality."

From: Scott Smith (b)(6)
Sent: Saturday, January 15, 2011 1:01 AM
To: TMFeedback
Subject: Re: "Small Business Study", Trademark Bullies

Hi, thanks, but I'm confused. The how could the SBA's fraud section say: "You may also request that your identity remain confidential. In this case, SBA OIG will not release your name without your prior consent unless we determine that such disclosure is absolutely unavoidable during the course of an investigation or audit."? If the SBA can keep information confidential, why can't the USPTO?

I'm not an attorney, or expert on FOIA, but based from what I've also been told by the Justice Dept, the USPTO could decline to disclose the information if they treat someone as a confidential source.

I appreciate your suggestion that people could anonymously submit their information, but that would seem to undermine the purpose of the study. I don't know how helpful it would be for the USPTO to receive anonymous, non-specific allegations of trademark bullying.

Please excuse my directness, but it's very troubling to hear that trademark bullies may be so easily provided access to all the information small business victims provided to the USPTO about trademark bullies, and did so in hopes of exposing and stopping trademark bullies. It seems like a situation ripe for abuse and retaliation by trademark bullies, the very people that created the need for the study.

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BizStarz
(b)(6)

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Note: Due to Entrepreneur Magazine's aggressive efforts to monopolize the word "entrepreneur,

Morris, Craig

From: TMFeedback
Sent: Saturday, January 15, 2011 7:44 AM
To: (b)(6)
Subject: RE: "Small Business Study", Trademark Bullies

And please note that the USPTO is closed Monday for the Federal Holiday, so it is unlikely that we will have any more information until possibly Tuesday. Thank you.

From: Scott Smith (b)(6)
Sent: Saturday, January 15, 2011 1:01 AM
To: TMFeedback
Subject: Re: "Small Business Study", Trademark Bullies

Hi, thanks, but I'm confused. The how could the SBA's fraud section say: "You may also request that your identity remain confidential. In this case, SBA OIG will not release your name without your prior consent unless we determine that such disclosure is absolutely unavoidable during the course of an investigation or audit."? If the SBA can keep information confidential, why can't the USPTO?

I'm not an attorney, or expert on FOIA, but based from what I've also been told by the Justice Dept, the USPTO could decline to disclose the information if they treat someone as a confidential source.

I appreciate your suggestion that people could anonymously submit their information, but that would seem to undermine the purpose of the study. I don't know how helpful it would be for the USPTO to receive anonymous, non-specific allegations of trademark bullying.

Please excuse my directness, but it's very troubling to hear that trademark bullies may be so easily provided access to all the information small business victims provided to the USPTO about trademark bullies, and did so in hopes of exposing and stopping trademark bullies. It seems like a situation ripe for abuse and retaliation by trademark bullies, the very people that created the need for the study.

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> Sent: Thursday, January 13, 2011 9:43 PM
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Morris, Craig

From: TMFeedback
Sent: Wednesday, January 19, 2011 11:19 AM
To: (b)(6)
Subject: RE: "Small Business Study", Trademark Bullies

You should expect to be contacted directly by Ms. Dahlia George of the USPTO, our FOIA point person, who will attempt to explain the USPTO position on the matter.

Thank you.

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Morris, Craig

From: Eric Perrott [(b)(6)]
Sent: Sunday, October 31, 2010 4:52 PM
To: TMFeedback
Subject: Re: Small Business Study

On Sun, Oct 31, 2010 at 4:51 PM, Eric Perrott <(b)(6)> wrote:

I was wondering if the USPTO provides any sort of background (i.e. similar to legislative history) as to what prompted this notice of inquiry?

Thank you,
Eric Perrott

--
Eric J. Perrott
J.D. Candidate, 2012
Senior Articles Editor, *The American University Intellectual Property Brief* (www.ipbrief.net)
American University, Washington College of Law